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change price on two weeks' notice, to refuse to accept an order on thirty days' notice before date of delivery or to cancel the contract on thirty days' notice (the plaintiff also having this latter power). But such reservations do not affect the question that the plaintiff acquired some consideration and could have, in the absence of cancellation, prevented the defendant from sending a third party as agent into his territory. This independent consideration, remaining as the basis of the contract, made it binding in the parties.

The principal case is one of a series of recent cases in which this question of mutuality in contracts between dealers and distributors of automobiles has arisen; the decision is therefore important in its bearing on that question, especially since *Goodyear v. Klopmeier Motor Car Company*⁸ is *contra*. It is submitted, however, that the decision is correct on the theory that an independent consideration was present so as to take the case out of those cases which fall because of want of mutuality.

N. I. S. G.

CORPORATIONS—NEGOTIABILITY OF STOCK CERTIFICATE—Certificates of stock had been issued by a corporation with a form of assignment and power of attorney to make the necessary transfer printed on the back. The owner of such a certificate, after signing it in blank, pledges it as security for a loan to a national bank whose cashier subsequently embezzled and appropriated it to his own use. In an action by an innocent purchaser from the cashier, it was held¹ by the Supreme Court of Massachusetts that, as no title passed, the defendant as the transfer agent of the corporation is not liable either in contract or tort for its refusal to return the certificate presented for transfer, or to issue therefore a new certificate. It is well established that certificates of stock in a private corporation, indorsed in blank by the persons to whom they are issued, are not negotiable instruments,² and no mere usage among stockholders or others can make them so, for no usage is good if it conflicts with an established principal of law.³ They contain, in the first place, no words of negotiability. They declare, simply, that the person named is entitled to certain shares of stock. The general consequence of this doctrine of non-negotiability is, that whoever takes the certificates does so subject to its equities and burdens in the same manner as a purchaser of any other non-negotiable paper, and though ignorant of such equities and burdens his ignorance does not relieve the papers therefrom or enable him to hold it discharged therefrom.⁴

¹ *Supra*, note 7.

² *Barstow v. City Trust Co.*, 103 N. E. Rep. 911 (Mass. 1914).

³ *Hammond v. Hastings*, 134 U. S. 401 (1890).

⁴ *East Birmingham Land Co. v. Dennis*, 85 Ala. 565 (1888).

⁵ *Mechanics' Bk. v. N. Y., etc., R. Co.*, 13 N. Y. 599 (1856); *Young v. South Tredegar Iron Co.*, 85 Tenn. 189 (1886).

In England the certificates are regarded as mere evidence of ownership of stock and are neither negotiable nor *quasi-negotiable*. The purchaser is never protected against equities involved in the title of prior owners of the certificate, and only a transfer on the corporate books shuts off those equities.⁵ On the other hand, in America, in view of the extensive dealings in certificates of shares in corporate enterprises, and the interest, both of the public and of the corporation which issues them, in making them readily transferable and convertible, some of the elements of negotiability have been given them.⁶ Although most courts agree that the delivery of the certificate with a blank power of attorney duly executed only confers upon the holder an equitable right to effectuate a transfer and upon surrender of the old certificate to compel the issue of a new certificate to him;⁷ yet, by putting it within the power of the holder of the certificate to induce belief that he has a right to the shares, the registered owner may estop himself from setting up the legal title. This is based upon the principle, that it is more just and reasonable, where one of two innocent parties must suffer loss, that he should be the loser who has put trust and confidence in the deceiver than a stranger who has been negligent in trusting no one.⁸ Such was the case of *McNeil v. The Bank*⁹ which holds that an agent to whom the owner has delivered a certificate of stock duly indorsed for transfer, with a limited power of disposition for a special purpose, may bind the title thereto as against the true owner by transferring it to a *bona fide* transferee who has no notice of the limitations of the agent's authority, although the transfer was made for an unauthorized purpose and with the intention on the part of the agent to commit a fraud upon his principal.

If, however, the agent, instead of representing that the stock is his own, admits it belonged to another for whom he claims to act, and one lends money upon the faith of such representations, in such case the title of the real owner who has in fact given no such authority to act must prevail against the claim of the pledgee.¹⁰ Similarly where there is no agency the *quasi-negotiable* nature of a stock certificate cannot be availed of.¹¹ There must be something more than the mere intrusting to a servant of the custody of the

⁵ *Williams v. Colonial Bank*, L. R. 38 Ch. D. 388 (1888); *Bank v. Cady*, L. R. 15 App. Cas. 267 (1890).

⁶ *Knox v. Eden Musée Co.*, 148 N. Y. 441 (1896).

⁷ *Matthews v. Hoagland*, 48 N. J. Eq. 455 (1891); In *Commonwealth v. Crompton*, 137 Pa. 138 (1890), it was said, a delivery of the certificates, coupled with words of absolute and present gift, may invest the donee with an equitable title to the stock. New York is apparently *contra*, see *McNeil v. Bank*, 46 N. Y. 325 (1871).

⁸ *Allen v. Mowry & Co.*, 66 Ala. 10 (1880).

⁹ 46 N. Y. 325 (1871).

¹⁰ *Merchants' Bank of Canada v. Livingston*, 74 N. Y. 223 (1878).

¹¹ *Knox v. Eden Musée Co.*, see *supra*, note 6.

certificate and the consequent opportunity for theft in order to preclude the master reclaiming it, if stolen by servant and sold to another. It may be assumed that if a corporation is not liable to one who has given value for indorsed certificates to which an employee was given access, the same principle would be applied to the case of a stockholder who without negligence gives his clerk or some other trusted person access to the indorsed certificate.

It is well settled that, in the absence of negligence, a forged indorsement and transfer of certificates of stock cannot divest the owner of his title, nor confer any rights, as against him, upon the transferee; and if the corporation recognizes the forged indorsement and transfers the stock, so that the certificate is lost to the real owner, it may be compelled to replace it, or to pay to him its value.¹² On the same principle, an innocent purchaser of a certificate of stock indorsed in blank by the owner, and stolen from him, or lost by him, without negligence on his part, acquires no title, as against the owner.¹³ Neither the absence of blame on the part of the officers of the company in allowing an authorized transfer of stock, nor the good faith of the purchaser of stolen property, will avail as an answer to the demand of the true owner. The great principle that no one can be deprived of his property without his assent, except by the process of the law, requires that the property wrongfully transferred or stolen should be restored to its rightful owner.¹⁴

It is a general rule that when the legal title to property, and the apparent unlimited power of disposition, are vested in a person, the rights of a purchaser from him for a valuable consideration, without notice of a recent trust upon which the property is held, are unaffected. The purchaser in such a case requires an equity equal to the outstanding equity of which he has no notice, and this, coupled with the legal title, prevails against the prior equity. This principle is applicable to transfers of certificates of stock. If a person who holds the legal title to certificates in trust appears on the books of the corporation as the absolute owner, a purchaser and transferee of the certificates for value, and without actual or constructive notice of the trust, acquires a good title, as against the *cestui que trust*.¹⁵ When, however, the certificate shows on its face that it is held in trust, transferees are charged with notice of the trust, and with the duty of inquiring into the authority of the holder to transfer the

¹² Western Union Tel. Co. v. Davenport, 97 U. S. 369 (1878).

¹³ Barstow v. Savage Mining Co., 64 Cal. 388 (1883); Bangor Electric Light & Power Co. v. Robinson, 52 Fed. Rep. 520 (1892), where it was said, while certificates of stock indorsed in blank have a certain *quasi* negotiable character, this quality does not inhere in them to the extent of depriving the owner of title when the certificate is stolen from him and then transferred to an innocent purchaser for value.

¹⁴ Western Union Tel. Co. v. Davenport, *supra*, note 12.

¹⁵ Winter v. Montgomery Gas Light Co., 89 Atl. Rep. 544 (1889).

same.¹⁶ Thus it may be seen that the purchaser of a certificate of stock is protected against the rights of a previous holder practically only where such previous holder has enabled persons to sell the stock, and consequently is estopped from claiming he did not intend so to do.¹⁷

S. L. M.

INTERSTATE COMMERCE—FINALITY OF REGULATIONS IN TARIFF SCHEDULES—LIMITATION OF LIABILITY—BAGGAGE—The question as to whether a common carrier, in interstate traffic, can limit its liability to an agreed valuation, has again been passed upon favorably in a recent decision,¹ where, however, the question was as to baggage, instead of merchandise, as in the now leading case of *Adams Express Co. v. Croninger*.² An action was brought on a contract of carriage in interstate commerce to recover from the railroad company for the loss of certain baggage belonging to the plaintiff, which had been transported by the defendant in interstate commerce. From the findings of fact it appeared that the baggage was checked on a first class ticket purchased by the plaintiff; that at the time the baggage was checked the plaintiff had no notice of the regulations hereinafter referred to limiting the liability of the defendant (further than such notice is to be presumed from the schedules filed and posted); that no inquiry was made by the defendant on receiving the plaintiff's baggage as to its value; that any reasonable person would infer from the outward appearance of the plaintiff's baggage that the value largely exceeded one hundred dollars; that the true value of the baggage was one thousand nine hundred four dollars and fifty cents, and that the loss of the baggage was due to the negligence of the defendant. It was also found that the tariff schedules filed by the defendant with the Interstate Commerce Commission, in accordance with the Interstate Commerce Act, and properly posted according to law, contained provisions limiting the free transportation of baggage to a certain weight and the liability of the defendant to one hundred dollars followed by a table of charges for excess weight and also contained the following provision:

"For excess value the rate will be one-half of the current excess baggage rate per one hundred pounds for each one hundred pounds, or fraction thereof, of increased value declared. The minimum charge for excess value will be fifteen cents.

¹⁶ *Shaw v. Spencer*, 100 Mass. 382 (1868); *Gerard v. McCormick*, 130 N. Y. 261 (1891); *Clemens v. Heckscher*, 185 Pa. 476 (1898).

¹⁷ *McNeil v. Bank*, *supra*; *Wood's Appeal*, 92 Pa. 379 (1880); *Otis v. Gardner*, 105 Ill. 436 (1883); *Natl. Safe Deposit, etc., Co. v. Gray*, 12 App. D. C. 276 (1898).

¹ *B. & M. R. R. v. Hooker*, decided by the United States Supreme Court, April 6, 1914.

² 226 U. S. 491 (1912).